

REMARKS

The applicants herewith respond to the final action. This response is filed along with an RCE request.

The examiner has maintained Holzer-Popp '099 as prior art, and now also cites the publication submitted in February 2004 with the previous response as prior art. Applicants respectfully traverse these conclusions. First, the publication and accompanying declaration clearly establish that the invention was conceived and reduced to practice before the filing date of the referenced patent. The rejection in light of the referenced patent thus cannot be maintained. As to the conclusion that the publication is prior art, this is both speculative and incorrect, and so should be withdrawn. A reading of the publication establishes that it describes the state of the art as well as the invention. The examiner, without any support in the record, has concluded that this raises an inventorship issue. This is based on nothing more than speculation. An equally plausible explanation would be that the listed authors who are not inventors either contributed to the written document and not the invention, or contributed only to description of subject matter other than the invention. An equally plausible conclusion regarding the named inventors not listed as authors is that they did not participate in writing this paper. Please note that the applicants are not claiming that these alternative explanations are in fact the case, but rather that they support the unarguable conclusion that the authorship of the publication in no way necessarily reflects inventorship.

The applicants thus request that the examiner withdraw the outstanding rejections.

If for any reason this Response is found to be incomplete, or if at any time it appears that a telephone conference with counsel would help advance prosecution, please telephone the undersigned in Westborough, Massachusetts, (508) 898-1501.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'BM Dingman', written over a horizontal line.

Brian M. Dingman
Reg. No. 32,729